IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 35 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

SANGEETH KENDRA CHARITY TRUST

Appearance:

1. WEALTH TAX REFERENCE No. 35 of 1987

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

MR MK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr BB Naik learned counsel for the revenue makes a specific request that since this reference is pending for the last about 13 years and more particularly, since the controversy raised in this reference is concluded by a direct decision of this Court, this Bench may take up this reference for final disposal, notwithstanding the fact that one of us (Mr. D.A. Mehta,J) had appeared for the respondent-assessee at the hearing of the reference application before the Income Tax Appellate Tribunal.

In view of the above request, we take up this reference for final disposal.

2. In this reference at the instance of the revenue, for assessment years 1974-75 and 1975-76 a common question referred for our opinion is as under:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that since the assessee was entitled to exemption under section 11 of the Income-tax Act, 1961 section 21-A of the Wealth-tax Act had no application at all?"

3. We have heard Mr BB Naik learned counsel for the revenue and Mr MK Patel learned counsel for the respondent-assessee.

4. Our attention is invited to the decision dated 18-1-2001 in Wealth Tax Reference No.26 of 1985 and the learned counsel agree that the facts giving rise to the present reference are similar to the facts giving rise to the aforesaid wealth tax reference No.26 of 1985. In that decision, this Court held that in view of the scheme of the Wealth Tax Act read with the Income-tax Act, if a trust is recognised as a public charitable trust under the Income-tax Act, it has to be so recognised under the Wealth-tax Act also. Therefore, the provisions of sec. 21-A of the Wealth-tax Act would not be applicable to the trust recognised as a public charitable trust under the Income tax Act.

5. Following the aforesaid decision, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta,J)

zgs/-